STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

REASONS:

The analogy cited by city officials in support of the request for State school construction aid is correct to the extent of the recital that a drilled well or sewer treatment facility *on the site* would qualify for school construction aid. *Schofield v. School District No. 113, Labette County,* 105 Kan. 343, 184 P. 480. In that case, the word "appendage" used in a state statute authorizing a district school board to provide the necessary "appendage" for the schoolhouse included a well *on the school premises.* Also see to the same effect *Hemme v. School District No. 4,* 30 Kan. 377, 1 P. 104, and *In re Bozeman,* 42 Kan. 451, 22 P. 628. The reference offered analogy concludes that State school construction aid should be paid on the extension lines brought to the school building lot because it is a situation not substantially different from digging an artesian well on the school lot. We cannot concur in that conclusion. Whereas in one case the drilled well and sewer treatment facilities would be wholly within the confines of the school site, in the other instance, offsite facilities are involved; in one case (the water line) to the extent of 3200 feet. Also, water and sewer facilities located entirely on the school lot are part and parcel of the school property whereas offsite extension lines cease to be an "appendage" of the school site at the lot boundary line. *Doughton v. City of Camden,* 72 N.J.L. 451, 63 A. 170. In that case, a water pipe under a road bed of a public street laid for the distribution of water for the use of a city and of its inhabitants was considered not to be an "appendage" to or a part of the adjoining lot. The distinguishing factors existing between *on site* and *offsite* construction expenses are material and bring about a different result respecting requested State school construction aid. Otherwise, where is the line to be drawn regarding eligibility of offsite expenses? Since the water line will be extended 3200 feet, payment of State subsidy for its construction would lend credence to the position that no line is to be drawn at all. This opinion draws the line at the property line of the school lot. Otherwise, State school construction funds would be utilized to subsidize construction of municipal facilities off the schoolhouse lot; facilities available to private property owners (at a cost, to be sure) abutting the length of the extended lines along the public way. The aspect of rebates to the State of a proportion of expended State aid only serves to point out that the expenditure, if made in the first instance, was involved in funding something not completely related to school costs.

The provisions of 20 M.R.S.A. § 3457 authorize the Commissioner of Education to appropriate moneys to administrative units for eligible capital outlay purposes. The phrase (capital outlay purposes) means, among other things, the cost of new construction of a public school building. Nothing appears in the reference section allowing us to interpret eligibility for State school construction aid on the basis of offsite costs such as those involved here.

JOHN W. BENOIT, JR.
Deputy Attorney General

February 24, 1972
Maine Land Use Regulation Comm.

James Haskell, Director

The Shoreland Zoning Law and The Maine Land Use Regulations Law.

SYLLABUS:

12 M.R.S.A. § 685-A.5 (P.L. 1971, c. 457 § 5) in no way limits the responsibility of the Maine Land Use Regulation Commission to act together with the Maine

Environmental Improvement Commission after consultation with the State Planning Office to adopt land use ordinances, under certain circumstances, for all land areas within 250 feet of the normal high water mark of any navigable fresh or salt water body.

FACTS:

12 M.R.S.A. § 685-A.5 (P.L. 1971, c. 457 § 5) provides:

"Land use guidance standards adopted by the Maine Land Use Regulation Commission pursuant to this chapter for management districts shall in no way limit the right, method or manner of cutting or removing timber or crops, the construction and maintenance of hauling roads, the operation of machinery or the erection of buildings and other structures used primarily for agricultural or commercial forest product purposes, including tree farms."

12 M.R.S.A. § 4811 (P.L. 1971, c. 535) provides:

"To aid in the fulfillment of the State's role as trustee of its navigable waters and to promote the public health, safety and the general welfare, it is declared to be in the public interest that shoreland areas defined as those land areas any part of which are within 250 feet of the normal high water mark of any navigable pond, lake, river or salt water body be subjected to zoning and subdivision controls. The purposes of such controls shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish, aquatic life, bird and other wildlife habitat; control building sites, placement of structures and land uses; and conserve shore cover, visual as well as actual points of access to inland and coastal waters and natural beauty."

12 M.R.S.A. § 4813 (P.L. 1971, c. 535) provides in part:

"If any municipality fails to adopt zoning and subdivision control ordinances for shoreland areas . . . the Environmental Improvement Commission and the Maine Land Use Regulation Commission shall, following consultation with the State Planning Office . . . adopt suitable ordinances for these municipalities . . . . "

QUESTION:

Is the power of the Maine Land Use Regulation Commission and the Environmental Improvement Commission, after consultation with the State Planning Office, to adopt land use ordinances for "shoreland areas" in areas classified by the Maine Land Use Regulation Commission as falling within the "management districts" in any way limited by the provisions of 12 M.R.S.A. § 685-A.5 which limits the Maine Land Use Regulation Commission's power to adopt land use guidance standards for agricultural or commercial forest product activities in management districts?

ANSWER:

No.

REASONING:

12 M.R.S.A. § 685-A.5 limits the power of the Maine Land Use Regulation Commission to adopt land use guidance standards "pursuant to this chapter" (Chapter 206-A) in management districts by prohibiting the Commission from in any way limiting certain activities of agricultural and commercial forest product industries.

12 M.R.S.A. § § 4811-4814 (Chapter 424) on the other hand permits and indeed requires the Maine Land Use Regulation Commission together with the Environmental Improvement Commission, after consultation with the State Planning Office, to adopt ordinances to "prevent and control water pollution; protect spawning grounds, fish, aquatic life, bird and other wildlife habitat; control building sites, placement of structures and land uses; conserve shore cover, visual as well as actual points of access to inland and coastal waters and natural beauty".

It is apparent that the Legislature in 12 M.R.S.A. § § 4811-4814 has chosen to deal specially with Shoreland Areas despite other applicable state laws and regulations. It is further apparent that the limitations upon the Maine Land Use Regulation Commission's power in Management Districts as to regulating agricultural and forest product activities is only with regard to "land use guidance standards" adopted pursuant to Chapter 206-A of Title 12 of M.R.S.A.

Ordinances for Shoreland Areas, adopted by the Maine Land Use Regulation Commission, together with the Environmental Improvement Commission, after consultation with the State Planning Office, must not only be consistent with the purposes of 12 M.R.S.A. § § 4811-4814, but must be in furtherance of these purposes. If, in the judgment of the two Commissions, ordinances controlling agricultural or forest product activities are necessary to carry out the purposes of 12 M.R.S.A. § § 4811-4814, then it is their joint duty to enact such ordinances. While the Maine Land Use Regulation Commission may not adopt these ordinances under the guise of "land use guidance standards" in "management districts", there is no reason that reference to such ordinances may not be made in the Maine Land Use Regulation Commission Regulations. It should be noted, however, that enforcement of such ordinances will require joint action by the Maine Land Use Regulation Commission and the Environmental Improvement Commission.

E. STEPHEN MURRAY
Assistant Attorney General

March 3, 1972
Education

Asa A. Gordon, Assistant Commissioner

Requirements for approval of private schools for attendance, tuition and State subsidy purposes

SYLLABUS NO. 1:

State subsidy may not be paid to an administrative unit which sends pupils to a private school which does not employ certified teachers and does not maintain a school year of 175 actual school days.

SYLLABUS NO. 2:

The Commissioner of Education may not approve:

(A) Private schools which do not employ all certified teachers and which do not maintain a school year of at least 175 actual school days, and

(B) Private schools which operate the required 175 actual school days per year, but do not employ all certified teachers.